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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1088 of 1985

with

SPECIAL CIVIL APPLICATION No 7120 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

3. Whether Their Lordships wish to see the fair copy
of the judgement?

No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

K V AHIR

Appearance:

1. Special Civil Application No. 1088 of 1985
MR HARDIK C RAWAL for Petitioner
MR HK RATHOD for Respondent No. 1

2. Special Civil ApplicationNo 7120 of 1992
MR HARDIK C RAWAL for Petitioner
MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 15/07/96

ORAL JUDGEMENT

These two writ petitions are preferred under Article 226 of the Constitution of India against the award passed by the Presiding Officer, Labour Court, on 7.1.84. Both these petitions arise out of one and the same matter and therefore, they are being heard and disposed of by this common judgment. Respondent in SCA No. 1088 of 1985 K.U.Ahir was working as a conductor with the petitioner Gujarat State Road Transport Corporation (Corporation for short) and in the year 1976 he had put in about 12 years service .On 23.7.76 he was the conductor in bus bearing No. 4488 of Sayon-Kamrej route. When his bus reached at Palej stand at about 21.45 hours the same was checked and it was found that he had not issued tickets to about six passengers of Rs. 1.80 p. He was charge sheeted for the said incident and after holding necessary departmental inquiry, he was dismissed on 19.5.77. The conductor had challenged the said order of dismissal and on account of his challenge reference was made being Ref.(LCS) No.215 of 1979 before the Labour Court, Surat.

2. Before the Labour Court the conductor had not challenged legality and validity of the departmental proceedings and neither the conductor nor the corporation had led any evidence before the Labour Court. Only the proceedings of the departmental inquiry were produced by the corporation and on going through the said papers of departmental inquiry and after hearing both the parties the learned Presiding Officer, Labour Court came to the conclusion that the punishment of dismissal awarded to the conductor workman was disproportionate to the guilt committed by him. He therefore, set aside the order of dismissal and inflicted punishment of non payment of back wages and stoppage of increments for two years with future effect by passing the following orders:

"The order dated 19.5.77 passed by the first party, terminating the services of the second party, is quashed and set aside. Instead of this, the applicant may not be paid the back wages and he should be inflicted the punishment of stoppage of increment for a period of two

years with future effect. The applicant be reinstated in service within a period of two months from the date of publication of this Award and the first party has not to pay the back wages to the applicant for the period prior to his reinstatement. However, for the purpose of gratuity, the period of service is to be treated as continuous. No order as to costs of this Reference."

The corporation has preferred writ petition challenging the interference of the Labour Court in the quantum of punishment and they seek restoration of the order of dismissal passed by the disciplinary authority; whereas the conductor has preferred writ petition challenging the order of the Labour Court in not allowing him backwages with continuity of service and stopping two increments.

3. At the cost of repetition it must be stated that the legality and validity of the departmental inquiry was not disputed before the Labour Court. It is also an admitted fact that when the bus was checked on 23.7.76 six passengers were not issued tickets by the conductor for the amount of Rs. 1.80 p. The learned Presiding Officer of the Labour Court had taken into consideration the contention of the conductor. It was claimed by the conductor that his bus was a bus connected with a train and as the train was late the bus had left the depot beyond the scheduled time. But as the passengers were eager to go earlier, the bus was started without issuing the tickets and he was in the process issuing the tickets when the bus was checked and that he had not closed his way bill. Thus according to him, he had no dishonest intention of misappropriating the amount of the tickets or to defraud the corporation. The Labour Court has also found that there was a misconduct committed by the conductor of not issuing any tickets. The learned Presiding Officer, Labour Court after considering the material which was collected during the departmental inquiry has observed that there is reasonable doubt as to whether in fact the conductor had dishonest intention of misappropriating the amount or not. Learned advocate for corporation vehemently urged before me that it is not open for the Labour Court to have reappreciated all the materials before him and he was bound by the conclusion arrived at by the inquiry officer. But when the Labour Court has exercised the power u/s 11A of the I.A. Act, the Labour Court has to consider the materials produced during the inquiry and to find out as to whether the

punishment awarded to the workmen was justified or not. In order to consider that question he has only to look into the materials produced during the departmental inquiry and to see as to what is the nature of the misconduct or guilt committed by him and whether the punishment awarded to him was justified or not. Therefore, for this purpose he has to consider and appreciate of the materials on record for the limited purpose of finding as to what is the nature of the misconduct of the workman and whether the punishment awarded by the inquiry officer or disciplinary authority was justified or not. Therefore, in the circumstances, the learned Presiding Officer of the Labour Court has come to the conclusion by considering and appreciating the the materials on record, that the punishment awarded was not justified and hence his act could not be said to be illegal and improper. The Labour Court recorded the finding of fact regarding the nature of misconduct committed by the workman and he has come to the conclusion that there was misconduct on the part of the workman conductor in not issuing tickets to six passengers but from the material on record it could not be said that he had made an attempt to commit misappropriation of the fare of the tickets. Therefore, in the circumstances the Labour Court has found that misconduct or guilt committed by the conductor was only of not issuing tickets and therefore the punishment of dismissal was not justified. The said finding could not be said to be illegal or improper so as to interfere with the same by exercising the power under Article 227 of the Constitution. Therefore, in the circumstances, I am unable to accept the claim of the petitioner in SCA No. 1088/85 of the corporation and to hold that the order of dismissal passed by the disciplinary authority against the the respondent conductor ought not to have been interfered with. I therefore, hold that the petition filed by the corporation deserves to be dismissed.

4. At the time of argument the learned advocate for the petitioner Mr. Rathod has fairly conceded before me that in view of the fact that the workman had made a concession before the Labour Court that he would not claim back wages, the ground taken by him in his writ petition for claiming back wages are being withdrawn and that he is not pressing for the same. Therefore, in the circumstances the order passed by the Labour Court in not making payment of back wages to the workman conductor will have to be maintained.

5. The learned advocate for the conductor in the

second petition Shri Rathod has contended before me that there is a mistake in the operative part of the order of the learned Presiding officer of the Labour Court in not mentioning specifically that there should be continuity of service for all purposes and not only for the purpose of gratuity. I have gone through the order of the Labour Court and the said order does not show that the learned Presiding Officer had come to the conclusion that the workman was to be deprived of the continuity of his service and that he was to be given fresh appointment as an alternative relief. The learned Presiding Officer does not mention that in the circumstances of the case the workman did not deserve continuity of service and that he was to be given only fresh appointment by way of alternative relief u/s. 11A of the I.D.Act. At the cost of repetition it must be said that the Presiding Officer of the Labour Court has come to the conclusion that there is reasonable doubt as to whether the workman had attempted to commit misappropriation of the amount and that there was only misconduct in not issuing ticket. But he had specifically stated that in view of the nature of the misconduct committed by him, he does not deserve back wages and he had further observed that he is to be inflicted with the punishment of stoppage of increment for two years with future effect, said punishment awarded by him was more than sufficient to met the misconduct committed by the workman. It seems that there was only a slip of hand in not mentioning that there should be continuity of service of workman for all the purposes.

6. In view of the above I hold that in the final order passed by the Presiding Officer, Labour Court, Surat on 7.1.84 the following portion has to be deleted.

"However, for the purpose of gratuity, the period of service is to be treated as continuous"

and in its place the following portion should be inserted.

"However, the workman's service to be treated as continuous for all purpose."

7. The corporation should take necessary steps for fixation of salary in view of the modification of the order passed by this court within 3 months from the date of receipt of the writ of this court. In the circumstances, the parties to bear their costs.

(S.D.Pandit.J)